

1 Tuesday, 25 June, 1946

2 - - -

3
4 INTERNATIONAL MILITARY TRIBUNAL
5 FOR THE FAR EAST
6 Court House of the Tribunal
7 War Ministry Building
8 Tokyo, Japan

9 The Tribunal met, pursuant to adjournment,
10 at 0930.

11 - - -

12 Appearances:

13 For the Tribunal, same as before.

14 For the Prosecution Section, same as before.

15 For the Defense Section, same as before.

16 - - -

17
18 (English to Japanese and Japanese
19 to English interpretation was made by OKA,
20 Takashi and TSUCHIYA, Jun, Sho Onodera
21 acting as Monitor.)
22
23
24
25

G
o
l
d
b
e
r
g
&
Y
e
l
d
e
n

1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: All the accused are present
4 except MATSUOKA and OKAWA, whose counsel appear here.

5 Before proceeding with the real business of
6 the Court, I desire to refer very briefly to an
7 article in the Nippon Times dealing not with the
8 proceedings yesterday but with the work of the Court
9 generally. That, in some respects, is a very valuable
10 article, but a number of corrections are called for.

11 In the first place, I am not the Chief
12 Justice of Australia. I was the Chief Justice of
13 Queensland, an Australian state, and during this
14 case I resigned that office and was appointed a Judge
15 of the High Court of Australia. On that court I am
16 number seven of seven judges. My correct designation
17 is Mr. Justice Webb or Sir William Webb. I would like
18 to see myself referred to as The President only.

19 Reference is also made to the fact that I
20 do most of the talking in this Court. That is by
21 arrangement with my colleagues. Any one of my col-
22 leagues could be as outstanding as the paper says I
23 am if he sat at this microphone and spoke for the
24 eleven of us; but, as President, that is my function.
25 You will notice that I am the only Judge before whom

1 there is a microphone. If the other Judges wanted
2 to say anything, they would have the greatest diffi-
3 culty in making themselves understood without a
4 microphone. I should like to say too -- and I say
5 this with some hesitation, some reluctance -- that I
6 have as my colleagues ten able and charming men who
7 have given me every support. There is not a question
8 of any importance that comes before us on which I do
9 not get the maximum of assistance from each of them.
10 My table is cluttered with notes from all ten members
11 of this Court.

12 There is also reference to my attitude
13 toward defense counsel more particularly. It is said
14 I speak with some asperity and the qualification is
15 made that I do so naturally. Whether that is a compli-
16 ment or not, I cannot say; but I can assure you that
17 sometimes terseness is mistaken for asperity. As an
18 Australian I think probably I am a bit terse. That
19 is a feature of my country, and perhaps on a day like
20 yesterday -- on a sweltering day in a court like this --
21 terseness may be mistaken for asperity.

22 But the one purpose of this statement is to
23 assure everybody present -- everybody interested --
24 that I have ten loyal colleagues who give me the
25 maximum of assistance on every point worthwhile.

1 The next business is a motion by the
2 prosecution to amend rule 6b.

3 Mr. Justice Mansfield.

4 MR. JUSTICE MANSFIELD: If the Tribunal
5 please, I read the application for leave to file a
6 motion and the notice of motion setting out the appli-
7 cation and the rule 6b1 as proposed by the prosecu-
8 tion. The Tribunal will note that the suggested
9 alteration is that in the case of only an excerpt
10 from a book or document being produced in evidence
11 that a copy of the excerpt only shall be delivered to
12 the defense and to the Tribunal and that the whole of
13 the document or a copy of the whole of the document
14 shall be placed with the Secretariat where it can be
15 inspected by any person who desires to inspect the
16 whole of the document.

17 The prosecution has availed itself of every
18 possible means of reproduction which there is in
19 Japan and it is still finding the difficulties of
20 reproduction, and translation as well, but reproduction
21 in particular, an obstacle which it is very hard to
22 get over. Numbers of processing units in Japan have
23 had the prosecution documents farmed out to them.
24 The prosecution has had priority over other SCAP
25 matter for the printing, multilithing and so on of

1 its documents, but still it is finding it very diffi-
2 cult to keep up to the deadline in accordance with
3 the progress of the trial.

4 I would furthermore point out that the
5 numbers of pages which are set out in the application
6 are based on a very conservative estimate. The thirty
7 copies to be made of each page of each book, if the
8 present rule is enforced in its entirety, will only
9 be sufficient for the purposes of the defense. It
10 is obvious that other copies will be necessary for
11 the Tribunal and for the prosecution. In such case,
12 it will be found that the rather large figure of
13 four million five hundred thousand pages might quite
14 easily amount to a figure of fifteen million -- that
15 is, if one hundred copies are made of each page of
16 each book.

17 In addition, the prosecution is finding it
18 extremely difficult to obtain supplies of paper,
19 all of which have to come from overseas; and to give
20 an idea what is being used, the prosecution at present
21 uses in one day what the remainder of SCAP uses in a
22 fortnight and the prosecution works seven days a week.
23 So that the amount of material at present being used
24 is very large; and if the requirement -- the strict
25 requirement of the rule has to be carried out, the

question of supplies will become a very vital one.

1 It is true that the prosecution has been
2 here for some months and has been preparing its
3 case. When it first arrived, it commenced the
4 scanning and analyzing of possibly millions of docu-
5 ments and at that time, of course, it was impossible
6 to decide what documents had to be reproduced and
7 it was necessary to examine the whole of the case
8 before the documents required could be selected.
9 They have been selected and they are being reproduced.

10 It is not as if the proposed rule will de-
11 prive the defense of any benefit which may be obtained
12 from the rest of the document because, as I have said
13 before, the document will be available to it in the
14 Secretariat and the defense will be able to peruse
15 it, analyze it and later use whatever other parts it
16 may think necessary.

17 It is therefore respectfully submitted to
18 the Tribunal by the prosecution that the Tribunal
19 will grant the application and order that the rule
20 6b1 of the present rules be amended to read as set
21 out in the motion.

22 THE PRESIDENT: Mr. Justice Mansfield,
23 perhaps the position would be met by a proviso to the
24 existing rule to the effect that in a particular case
25

1 a member of the Tribunal in Chambers might direct
2 that a document should not be wholly published or
3 translated as the case might be. I can quite see
4 that in many cases you will be using extracts from,
5 say, blue books, which are sometimes immense publica-
6 tions containing unrelated matter, masses of unrelated
7 matter.

8 MR. JUSTICE MANSFIELD: Well, I respectfully
9 submit that the proposal made by the President would
10 create a number of difficulties. First of all, there
11 would probably in certain cases be about ten to twelve
12 applications a day. Secondly, the prosecution would
13 not know beforehand whether the application would be
14 granted; and if an application should not be granted,
15 it would be necessary to -- and it became necessary
16 to reproduce the whole book, it would be unable to
17 produce that book in evidence until probably some
18 considerable time later. Therefore, it is suggested
19 that although a proviso would be better than the rule
20 as it at present stands, it would put the prosecution
21 in the position of not being able to know before the
22 presentation of the case what the Court would require
23 in relation to such books. Secondly, as I have said,
24 it would necessitate numerous applications each day
25 with the equivalent spending of time in making such

1 applications.

2 THE PRESIDENT: Probably instead of having
3 ten applications, each covering one document, you
4 could have one application covering ten documents.
5 I do not see much difficulty in that aspect. However,
6 if the rule goes through in the form desired by the
7 prosecution, I am quite sure we will have all sorts
8 of protests going on in Court.

9 This is a note by Lord Patrick who, through-
10 out this case, has played a leading part among the
11 Judges in the matter of translations, if you will
12 permit me to say so.

13 "If the prosecution proposes to put in
14 evidence part only of a document, the principal docu-
15 ment will have to be examined by at least twenty-six
16 counsel. How can they do that with only twenty-four
17 hours available in which to scan the principal and
18 note and copy any parts they wish to use in cross-
19 examination? Therefore, if only one part is to be
20 depended upon, must not the original be lodged, say,
21 four days before use?"

22 MR. JUSTICE MANSFIELD: That can be done but
23 I would also point out to the Tribunal that even if it
24 is lodged four days before the presentation of the
25 book in evidence, it will be in the possession of the

1 Secretariat and the defense will, no doubt, have
2 weeks before it will be necessary for them to pro-
3 duce excerpts from the book upon which they rely,
4 so they will have considerably more than the twenty-
5 four hours or the four days in which to scan and
6 analyze the document.

7 I also point out that if a translation
8 becomes necessary, that for a three-hundred page
9 book in Japanese, it would take thirty men, trans-
10 lators, ten days to translate that document;; and
11 it may only be a paragraph of that book which is
12 relevant to the matter before the Tribunal.

13 I desire, in conclusion, to place before
14 the Tribunal the difficulty, the immense difficulty,
15 which the prosecution has before it, and some of which
16 it has behind it, in scanning the documents, analyzing
17 them, having them translated and finally, having them
18 reproduced. It has only been after the greatest
19 energy and very many hours of work that the prosecu-
20 tion has been able to reproduce the documents and
21 translate them in the form in which it has done up
22 to the present. If further copies of books have to
23 be made, it will be necessary in order to keep the
24 other evidence going here that these books should be
25 sent to the United States for reproduction there and
it is impossible to say when they will be returned.

1 MR. MATTICE: If the Tribunal please, I
2 desire to call attention, first of all, to Section
3 III, Article 9, sub-section b of the Charter of this
4 Tribunal, which reads as follows:

M
O
r
s
e
&
A
b
r
a
m
5 "Language. The trial and related proceed-
6 ings shall be conducted in English and in the language
7 of the accused. Translations of documents and other
8 papers shall be provided as needed and requested."

9 That has some bearing on the situation that we
10 are talking about here. Request has been made for the
11 delivery or service of the whole of the documents, ex-
12 cerpts from which the prosecution has indicated it will
13 offer in evidence. It might be noted that the pro-
14 secution in addressing this Tribunal in respect to
15 the proposed amendment of Rule 6 b is speaking in the
16 present tense. I think they should be viewed and
17 judged in respect to the past tense. They have been
18 here many months. They have had opportunity -- at
19 least, compared to the defense they have had oppor-
20 tunity -- to have done the things which would have
21 enabled them to provide the copies of the whole
22 documents in compliance with the plain ruling of
23 Rule 6 b. I think we have a right to assume that
24 the prosecution was well aware of the provisions of
25 Rule 6 b, yet on June 3d, when this trial opened

1 and when American defense counsel, then but recently
2 arrived and who were, of course, wholly unacquainted
3 with this matter, made what we regarded as a reason-
4 able request for time, which this Tribunal very gra-
5 ciously granted -- parenthetically I may say we wish
6 we had been given a little more time, but we made good
7 use of the time which the Tribunal did grant us -- when
8 on June 3d American counsel were requesting time, the
9 prosecution strenuously objected and insisted that the
10 trial proceed and said they were ready for trial.

11 THE PRESIDENT: Mr. Mattice, what we want are
12 practical suggestions. We do not want you to tell us
13 what might have been; just tell us what you think
14 ought to be done from the defense viewpoint.

15 MR. MATTICE: The reasons advanced for the
16 amendment of this rule are based upon the difficulties,
17 present tense, of reproducing these documents. I
18 need not take the time to repeat again that the re-
19 production could easily have been provided. There
20 was airplane service to the states, and there are in
21 the states any number of concerns who could reproduce
22 anything they have in a very short time. I want to
23 suggest that it just simply isn't fair at this stage
24 of the proceedings, in the middle of the trial so to
25 speak, to put any part of the burden which the

1 prosecution had under Rule 6 b upon the defense.

2 It is well known to this Tribunal, and to everybody,
3 that the defense is woefully not only unprepared but
4 ill equipped and not able to assume any additional
5 burden.

6 We had in mind mentioning what the President
7 has already suggested, the utter impossibility of
8 defense counsel being able to peruse and study these
9 documents unless there be an adjournment of the Court
10 to give time for that, because the time simply does
11 not exist. It was suggested by Mr. Justice Mansfield
12 that they might be willing to furnish documents four
13 days in advance. That would not meet our actual needs
14 with respect to this matter. And with respect to the
15 excerpts, all lawyers are well aware -- it is nothing
16 new; no question about it -- an excerpt from a docu-
17 ment may have an entirely different meaning than when
18 read in connection with other matters in the document.
19 And, of course, how can defense counsel know; how can
20 they prepare to cross-examine; how can they decide
21 whether they want to offer it in connection with
22 cross-examination, not when we come to our case; not
23 when we come to the defense of the case, but as part
24 of the cross-examination when we desire to offer some
25 other parts of the document -- I say, how can we

1 know that unless we have the time to study it?

2 One thing more, if the Tribunal please:

3 I refer again to a matter which I have mentioned
4 previously, the matter of serving documents at or on
5 the weekend. Now, ordinarily counsel on opposite sides
6 of the case, in my experience anyway, are usually
7 able to work those things out. There is accommoda-
8 tion usually on both sides of a case. I am sorry to
9 say that we feel that the prosecution has not been
10 very accommodating in that respect. They knew our
11 situation; they knew that our administrative office
12 was not even open on Saturday afternoon and Sunday, a
13 thing over which we counsel have no control, yet they
14 served numbers of documents on Saturday afternoon,
15 knowing, of course, that we could not see them until
16 Monday. If it is necessary I think we shall prepare
17 a petition for leave to file, and, if granted leave,
18 file a motion for an amendment to the rule in that
19 respect. But I hope the Tribunal will, on its own
20 motion, make some provision that will obviate that
21 difficulty that exists by reason of documents being
22 served on Saturday afternoon and Sunday. It is a
23 strange proceeding to us.

24 THE PRESIDENT: Mr. Justice Mansfield, you
25 might deal with this when you are dealing with the

1 others. The Language Section complained, if I
2 understand them rightly, that some of the documents
3 come to them after they have been used in court.

4 MR. JUSTICE MANSFIELD: I am instructed that
5 the documents are delivered to the Language Section
6 before they are delivered to anybody else, if the Court
7 please.

8 THE PRESIDENT: Ensign Hornstein, will you
9 state the position shortly.

10 LANGUAGE SECTION CHIEF: Sir, as listed on a
11 Check Sheet from myself, representing the Language
12 Section, to the Secretariat, which Check Sheet, I
13 understand, was then forwarded to the President of the
14 Tribunal, we listed a number of documents which were
15 introduced the latter part of last week -- for the
16 most part they were affidavits -- one of which the
17 Japanese copy was submitted to us after the English
18 copy had been read here in court, another one of
19 which the Japanese copy was submitted to us approxi-
20 mately ten minutes before time to read it in court,
21 the majority of which was submitted to us -- I will
22 take that back -- not submitted to us, which we went
23 up to IPS document section and requested, about
24 seven or eight o'clock in the evening, prior to their
25 delivery here on the floor the following day.

1 MR. JUSTICE MANSFIELD: If the Tribunal
2 please, inquiries will be made -- I am not in a
3 position to answer that at present -- but inquiries
4 will be made to discover what the position of the
5 International Prosecution Section is in relation to
6 delivery of documents to the translation section.

7 With regard to the first point raised by
8 Mr. Mattice, as to the opportunity which the prose-
9 cution has had to reproduce these documents, I would
10 point out -- and I am now speaking in the past tense --
11 that on the 25th of April, 1946 the first rule of
12 court was made, in which it read as follows: "Prac-
13 ticable copies shall be made." It was not practica-
14 ble for the prosecution to furnish them and the pro-
15 secution would have been in a position to demonstrate
16 that fact. On the 20th of May, 1946 -- also in the
17 past tense -- the rule was changed on the application --
18 on the proposal of Ensign David P. Hornstein, not on
19 the application of the defense, or any of them, and
20 it was not then until the 20th day of May, 1946, that
21 the present requirement was promulgated. Therefore,
22 as far as opportunity is concerned, it is only since
23 the 20th of May, 1946, that such a requirement has
24 been made necessary by the rule of court, and it has
25 been and still is, I respectfully place before the

1 Tribunal impracticable to comply with the provisions
2 of that rule. In addition, there are remarks I have
3 already made, in regard to scanning and analyzing the
4 documents before selecting the ones for use.

5 Secondly, if the defense is given copies
6 twenty-four hours before they will have the same
7 difficulty with regard to scanning and analyzing them
8 and using the other parts of the documents when the
9 prosecution's excerpts are produced as they would have
10 if the one document is placed there with the Sec-
11 retariat.

12 THE PRESIDENT: My brother Higgins points
13 out that even if we made no rule of court, you would
14 still have the Charter, which provides that the pro-
15 ceedings shall be in two languages and still would be
16 in the same position under the Charter as you are
17 today. You and the defense seem to be leagues apart
18 in this matter, Mr. Justice Mansfield, and it may be
19 the only solution is the one I propose, that the
20 parties meet with a member of the Court in chambers,
21 with a view to lifting the rule in certain cases.

22 MR. JUSTICE MANSFIELD: If the Tribunal
23 please, will you allow me to mention that we have in
24 the past endeavored to make certain arrangements with
25 the defense, but owing to the fact that we cannot

1 get the unanimous consent of the defense, any agree-
2 ment without that is entirely useless, and I would
3 point out also that in relation to Mr. Justice
4 Higgins' suggestion that the proceedings, namely, the
5 excerpts which we are putting in evidence, are the
6 only portions of the book which form part of the
7 proceedings, and therefore they are required to be
8 translated into English and Japanese, and they are
9 in fact translated into English and Japanese. The
10 remaining portions of the book are not produced in
11 evidence, and therefore are not part of the proceed-
12 ings of the Tribunal.

13 I just point out, with regard to the re-
14 production of the diary of the defendant KIDO, which
15 is being or has been prepared for the defense, 5,400
16 pictures were taken of that diary, so as to produce a
17 photostatic copy for them. That consumed the whole
18 of the available photographic reproducing material
19 available. We were not able to obtain a further
20 photostatic copy for our own use. That is just one
21 incident with regard to the reproducing of documents
22 of that nature.

23 The prosecution is very loath to have to say
24 this, if the Tribunal please, but if the literal
25 compliance with the rule as it at present stands is

1 enforced, it will have to reconsider the whole of the
2 documentary evidence which it is placing before the
3 Court, and it may have to eliminate some of the
4 documentary evidence which it at present considers is
5 of a very important nature. It is entirely a mechani-
6 cal difficulty which is involved in the matter, which
7 the prosecution finds insurmountable.

8 The ordinary rule is that if one party to
9 litigation puts in evidence part of a document, then
10 the onus is upon the other party to put in the rest
11 of the document, or whatever part of the remainder
12 of the document that it requires to be put in. It
13 is not upon the party producing the excerpt to put in
14 the whole document.

15 THE PRESIDENT: The Court will consider the
16 matter. Does counsel wish to mention any other matter?
17
18
19
20
21
22
23
24
25

KOIZUMI

CROSS

W
h
a
l
e
n
&
D
u
d
a

1 MR. HAMMACK: Does the Court wish the prose-
2 cution to proceed at this time where we left off last
3 evening?

4 THE PRESIDENT: Mr. Hammack, we want to
5 know whether you found the affidavit which you thought
6 you destroyed?

7 MR. HAMMACK: No, your Honor, I did not. I
8 did destroy it, the original of the first affidavit
9 which went through.

10 THE PRESIDENT: Well, we said we would
11 admit a copy under those circumstances.

12 MR. HAMMACK: I have a copy, your Honor.
13 G O R O K O I Z U M I, called as a witness
14 on behalf of the prosecution, resumed the
15 stand and testified as follows:

16 CROSS-EXAMINATION (Continued)

17 MR. FURNESS: I now offer in evidence a copy
18 of the affidavit by Goro KOIZUMI, dated the 14th day
19 of June, 1946.

20 CLERK OF THE COURT: Marked exhibit 153.

21 (Whereupon, the document above
22 referred to was marked defense exhibit
23 No. 153 for identification.)

24 THE PRESIDENT: Admitted.

25 (Whereupon, defense exhibit No. 153

KOIZUMI

CROSS

was received in evidence.)

1 MR. FURNESS: We admit that we have not
2 served this twenty-four hours in advance, but we will
3 assume it is admissible, nevertheless.
4

5 THE PRESIDENT: This is an exceptional
6 case, which the rules cover.

7 BY MR. FURNESS:

8 Q Mr. KOIZUMI, as I understand it, you do not
9 speak or read or write English; is that correct?

10 A I cannot do so well.

11 Q Can you understand English when it is read
12 to you?

13 A No, I cannot.

14 Q As I understand it, you signed an affidavit
15 for the prosecution on the 14th day of June, 1946;
16 is that correct?

17 A Yes, I did.

18 Q You signed another on the 22d day of June,
19 1946?

20 A Yes, I did.

21 Q On the second affidavit, the affidavit of
22 22 June 1946, there is a certificate by Cecil H.
23 Uyehara to the effect that that document was trans-
24 lated to you before you signed it. Was Mr. Uyehara
25 present at the time that you signed the affidavit

KOIZUMI

CROSS

of the 14th June 1946?

1 A Mr. Uyehara was not present when I signed
2 the first affidavit.

3 Q Was any other interpreter present when you
4 signed the first affidavit?

5 A Yes, there was.

6 Q Was it read to you in -- translated into
7 Japanese?

8 A I did not feel it was sufficient.

9 Q What didn't you feel was sufficient?

10 A There was no explanation of each heading --
11 of each paragraph.

12 Q What you mean is that it did not contain
13 the complete information which you had given the
14 prosecution?

15 A No, I believe it was written. But afterwards,
16 seeing the Japanese text, I felt that there were
17 several places which called for corrections.

18 Q When did you see the Japanese text?

19 A I do not remember exactly, but I believe
20 it was the 21st of June.

21 Q The first affidavit contains a statement:
22 "Enforcement of the Peace Preservation Law of 1925
23 and later as enacted in 1928 was enforced strictly
24 in its control of mostly communistic activities."
25

KOIZUMI

CROSS

1 That does not appear in the second affidavit. Was
2 that a true statement?

3 A Could you tell me once again, here, the
4 contents of the first affidavit?

5 Q I will read it again. It is the affidavit
6 that you signed which is written in English. I
7 quote: "Enforcement of the Peace Preservation Law
8 of 1925 and later as enacted in 1928 was enforced
9 strictly in its control of mostly communistic acti-
10 vities."

11 A Concerning this point, the second affidavit
12 should not be different from the first.

13 Q Then why did you leave it out of the second
14 affidavit?

15 MR. HAMMACK: I object to that. It is argu-
16 mentative, may it please the Court.

17 THE PRESIDENT: I think he should answer
18 that.

19 A I believe that this paragraph was included
20 in the second affidavit, also.

21 MR. HAMMACK: At this time I object;
22 the second affidavit, your Honor, is the best evi-
23 dence of what is in it.

24 MR. FURNESS: I assure the prosecution that
25 it is not in the second affidavit. I will be very

KOIZUMI

CROSS

1 glad to show the second affidavit to the witness and
2 ask him to point it out. But as I understand it,
3 he does not read English. If you have the transla-
4 tion, I will show that to him.

5 MR. HAMMACK: I can assure the Court in
6 substance it is in the second affidavit.

7 THE PRESIDENT: We have both affidavits
8 before us.

9 Yes, Mr. Furness?

10 MR. FURNESS: If the prosecution says that
11 it appears in the second affidavit, I would appre-
12 ciate very much if they would point it out now that
13 it is before the Court.

14 MR. HAMMACK: On page 2, may it please the
15 Court, appears the following, in the second para-
16 graph -- or, rather, the first paragraph.

17 "In 1928 there was organized on a national
18 basis from the Police Department a section called the
19 High Police, the duties of which were primarily to
20 watch over the activities of extreme leftists and
21 extreme rightists, and in addition whose duties were
22 to watch over the activities of anyone who was
23 opposed to the policy of the Japanese Government as
24 it existed from 1931 to December 7, 1941."

25 THE PRESIDENT: Yes?

1 MR. FURNESS: I would call attention to the
2 fact that on the first affidavit, that same paragraph
3 appears in substance, except that it is in 1932
4 instead of 1938, and it says that it is to watch over
5 the activities of extreme leftists -- which are
6 communists, I assume, in this sense.

7 Furthermore, this paragraph does not mention
8 the Peace Preservation Law and is entirely different
9 from the paragraph which I read.

10 It has been called to my attention that I
11 said 1938. I should have said 1928.

12 THE PRESIDENT: We will recess now for
13 fifteen minutes.

14 (Whereupon, at 1045, a recess was
15 taken until 1105, after which the proceedings
16 were resumed as follows, English to Japanese
17 and Japanese to English interpretation being
18 made by MORI, Tomio, and SHIMANOUCHI, Toshiro,
19 Sho Onodera acting as Monitor.)
20
21
22
23
24
25

KOIZUMI

CROSS

G
r
e
e
n
b
e
r
g
&
B
a
r
t
o
n

1 MARSHAL OF THE COURT: The Tribunal is now
2 resumed.

3 CROSS-EXAMINATION (Continued)

4 BY MR. FURNESS:

5 Q The witness stated that he thought the
6 paragraph which I read from the first affidavit was
7 in the second affidavit. I will ask the translation
8 section to show him the translation of the second
9 affidavit and ask him to point out where he thinks it
10 is. I have no wish to be unfair to him in making this
11 request.

12 (Whereupon, the document above
13 referred to was handed to the witness.)

14 A I should like to see the passage in the
15 first affidavit which is related to the one you are
16 just inquiring about.

17 MR. FURNESS: Has the prosecution got a
18 translation of that into Japanese?

19 MR. HAMMACK: No. I haven't that down here
20 with me, may it please the Court. I believe the
21 Clerk may have some, or the defense certainly should
22 have about a hundred copies of it.

23 (Whereupon, the document above
24 referred to was handed to the witness.)

25 A I shall now reply. The fact with reference

1 to the communists was not clearly stated on its face
2 in the second affidavit, as it was in the first one.
3 As a matter of fact, the duty of the police was to
4 carry out the enforcement of the Peace Preservation
5 Law.

6 THE MONITOR: Correction. Enforcement of
7 Peace Preservation Law which was designed chiefly
8 as a measure to counteract communism.

9 A (Continued) Hence, the contents of the
10 Peace Preservation Law had as its primary objective
11 the control of communism. Even though the second
12 affidavit does not mention that as such, the second
13 affidavit was prepared with that idea in mind --
14 that is, the control of communistic activities.

15 THE PRESIDENT: Mr. Furness, you have de-
16 veloped this point sufficiently for the purposes of
17 this Tribunal of eleven judges. Don't forget that
18 we are judges, not a jury. These are trifles. The
19 amount of time spent on them is quite out of pro-
20 portion to the value of the answers you get.

21 MR. FURNESS: There are other differences in
22 the affidavits, but since they are both before the
23 Court I will not point them out except to show that
24 the same sort of change from extreme leftists to
25 include extreme rightists is included in the first

KOIZUMI

CROSS

four paragraphs on page 2 of the second affidavit.

THE PRESIDENT: The existence of the two affidavits insures the closest scrutiny of this man's evidence by the judges. You cannot help it any more.

Q Mr. KOIZUMI, you said yesterday that you, as chief of police, thought that any person who was against the war was a communist, and you prosecuted him as such. Was this directed by the Home Ministry or, in doing so, did you act on your own discretion?

A I did not say that all those who opposed the war were communists. The main function of the Home Office in this connection was to give guidance to the people not to talk in opposition to the war. But, if there were any violations of any laws, then offenders thereof were considered as suspects and, on that assumption, investigated and examined as communists.

In addition, I should like to say that I am not pointing out any concrete case with which I was confronted when I was chief of police. I merely said that if there happened to be a case of a public speech or a demonstration in opposition to the war, then I said what the police would have done in such a case.

Q In both your affidavits you say that the

KOIZUMI

CROSS

1 family or neighborhood group movements were revived
2 for the purpose of educating the Japanese people on
3 governmental policy and to make the people war
4 conscious. Which war do you mean, the war in China,
5 in Manchuria, or the Pacific war, or any other war?

6 A In connection with that, may I say as I
7 said yesterday that the purpose of the neighborhood
8 association is that of mutual assistance among
9 neighbors. It is based on that idea. And this
10 neighborhood association system was created on a
11 national basis from the spring of 1940. Through
12 this system the government endeavored to have its
13 policy understood by the people at large. At that
14 time the China Incident was in progress, and one
15 of the objectives of the government was to have the
16 people become more conscious of the fact that there
17 were hostilities going on between Japan and China.

18 Q And the same thing applies to the purpose
19 of the Imperial Rule Association of which you were
20 the head of one department; is that correct?

21 A With respect to the Imperial Rule Assistance
22 Association, I should say that my duty as depart-
23 mental chief of the Association, namely, chief of
24 the Cooperative Council Department, was to use, of
25 course, the neighborhood association in its program.

KOIZUMI

CROSS

1 But its work largely or primarily was with the
2 nation at large: to have the people of Japan and
3 at large of all classes represented in the Council,
4 and, through these representatives, to have the
5 policy of the government better understood among
6 the people, and also, through these representatives,
7 to secure from the people their desires and opinions
8 and to have these desires and opinions utilized and
9 reflected in government policy.

10 Q Mr. KOIZUMI, before you signed either of
11 these affidavits, I assume you had several confer-
12 ences with the prosecution; is that correct?

13 A Yes, that is true.

14 THE PRESIDENT: That type of cross-examina-
15 tion will not help us, Mr. Furness.

16 MR. FURNESS: I intended, sir, to ask him
17 whether his questions and answers were taken down
18 by a stenographer and transcribed.

19 THE PRESIDENT: That does not help.

20 MR. FURNESS: That is all the cross-
21 examination by defense.

22 MR. HAMMACK: No further direct, may it
23 please the Court.

24 (Whereupon, the witness was
25 excused.)

1 MR. DONIHI: May it please the Tribunal,
2 the prosecution at this time desires to introduce
3 into evidence two laws, one of which was enacted on
4 January 10, 1941 relating to the control and censor-
5 ship of newspapers, and also a law enacted on the
6 fifth day of April, 1939 relating to the control
7 and censorship of motion pictures.

8 It is not my intention to read these laws
9 to the Tribunal. The purpose of introducing them is
10 to show the increased control that was exercised
11 through the laws and that during the period and the
12 life of the conspiracy.

13 MR. BROOKS: May we have the document
14 numbers, if you please?

15 MR. DONIHI: The first is prosecution
16 document No. 7005, that being known as "The Order
17 Of Restriction On Publication In Newspapers And
18 Others," otherwise known as "Imperial Ordinance
19 No. 37." The other is prosecution document 7101,
20 being The Motion Picture Law of 1939.

21 (Whereupon, the documents above
22 referred to were marked prosecution's
23 exhibit No. 154 and 155, respectively, for
24 identification.)
25

1 MR. McCORMACK: The defense wants to object
2 at this time to the introduction of these documents
3 in evidence. There has been no conspiracy shown,
4 and it is the defense's belief that this is the
5 improper time to introduce these matters. There is
6 no conceivable way that we can figure out how they
7 are material at this time. And, until such evidence
8 is introduced, we object to them.

9 THE PRESIDENT: The objection is overruled.
10 The documents are admitted. This is quite usual in
11 conspiracy cases. The connection is very frequently
12 shown even at the last minute.

13 (Whereupon, prosecution's exhibits
14 Nos. 154 and 155 were received in evidence.)

15 MR. DONIHI: Mr. President, it is my
16 pleasure at this time to present Mr. Hugh Helm of
17 the Kentucky Bar, duly admitted to the Bar of the
18 United States Supreme Court. Mr. Helm will
19 interrogate the next witness for the prosecution.

20 THE PRESIDENT: Mr. Helm!

21 MR. WARREN: If the Tribunal please, may
22 we have the exhibit numbers of document No. 7005
23 and 7101?

24 MR. DONIHI: Prosecution document No. 7101
25 is marked "exhibit No. 155." Document 7005 is

1 marked "exhibit No. 154."

2 MR. HELM: I'd like to call Baron SHIDEHARA,
3 if the Court please.
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SHIDEHARA

DIRECT

W
o
l
f
&
S
p
r
a
t
t

1 MARSHAL OF THE COURT: Mr. President, the
2 witness, Baron SHIDEHARA, is in court and will now
3 be sworn.

- - -

4
5 K I J U R O S H I D E H A R A , called as a wit-
6 ness on behalf of the prosecution, being first
7 duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HELM:

10 Q What is your name?

11 A SHIDEHARA, Kijuro.

12 Q What office do you now hold?

13 A Minister of State.

14 Q What office did you hold in 1931?

15 A Minister for Foreign Affairs.

16 Q You have talked with me on two occasions,
17 is that correct?

18 A It is correct.

19 Q At my request, did you make an affidavit for
20 use in this trial?

21 A That is correct.

22 Q I wish you would examine the document I hand
23 to you now, and answer whether or not this is the
24 affidavit?

25 A This is my affidavit.

SHIDEHARA

DIRECT

(Whereupon, the document above referred to was marked prosecution's exhibit no. 156 for identification.)

Q Do you read English?

A Yes, I do.

Q Did you read this affidavit in English?

A I read it in English.

Q Did you correct it at any point?

A There was one place where I made correction.

Q Will you state what correction you made?

A If my memory serves me correct, I think I said that "military clique" would be more appropriate than the term "Kwantung Army."

Q As corrected, is this an accurate statement of the facts set out herein?

A Yes, they are true.

MR. HELM: I offer this document in evidence, and ask that it be appropriately marked as prosecution's next in order, your Honor.

THE PRESIDENT: Admitted.

(Whereupon, prosecution's exhibit No. 156 was received in evidence.)

MR. CUNNINGHAM: If the Court please, before the document is accepted in evidence, the defendant, OSHIMA, wishes to object to the document,

SHIDEHARA

DIRECT

1 and to the procedure under which the affidavit is
2 received, and would like to call the attention of
3 the Court to a few reasons why we object.

4 For the first reason, the witness reads and
5 speaks English as well as almost anyone in the court-
6 room, and there is no reason why he should not testi-
7 fy by direct examination to question and answer pro-
8 cedure at this time.

9 Second, that by allowing the witness to
10 testify by affidavit in place of direct examination,
11 the Court in adopting this procedure, permits the
12 violation of one of the fundamental principles of
13 the law of evidence; a principle which is established
14 and has long --

15 THE PRESIDENT: No long speeches; no ser-
16 mons here.

17 The laws of evidence do not apply; you
18 ought to know that by this time.

19 MR. CUNNINGHAM: The next reason is that
20 the procedure was adopted for the saving of time.
21 Now, our experience in allowing the affidavits to
22 be used in lieu of direct testimony has shown in-
23 stance after instance where time has not been saved,
24 but time has been lost. That the witness has been
25 allowed to testify through affidavit in the language

SHIDEHARA

DIRECT

1 not of his own, but in the language of the prosecu-
2 tion staff -- the interrogators and the interpreters --
3 and the witness in this instance of vital importance,
4 should be permitted to testify in his own words by
5 question and answer process.

6 THE PRESIDENT: There is a limit to the
7 time that I am obliged to allow you to spend on
8 fatuous objections, and every objection you have
9 made today is fatuous. I will hear you no further,
10 unless my colleagues otherwise desire.

11 MR. CUNNINGHAM: If the Court please, I
12 have one further objection, which I think goes to
13 the heart of this proposition, which I think places
14 an undue burden upon the defense in this case, not
15 only --

16 THE PRESIDENT: Well, do shorten it and
17 do not talk so much.

18 MR. CUNNINGHAM: In easy words, this pro-
19 cedure places an undue burden upon the defense
20 to not only carry on the examination in the case,
21 but the cross-examination in addition. Now, we
22 should only have to carry on the cross-examination.
23 In instance after instance in this proceeding we have
24 not only had to dig out the facts in the examination,
25 but then we have had to go and prove the untruth of

SHIDEHARA

DIRECT

1 the statements in the affidavits in order to bring
2 out our cross-examination. Now, my point is that
3 that places an undue burden -- an unfair burden --
4 upon the defense in this case, which is of such
5 vital importance.

6 I ask the Court to reconsider its previous
7 ruling on this objection to this affidavit procedure,
8 and direct that the prosecution carry on its investi-
9 gation -- examination -- of the witnesses by the
10 usual procedure adopted for question and answer.

11 THE PRESIDENT: The Court has given the
12 fullest consideration to the admission of these
13 affidavits, and to this method of procedure on these
14 affidavits. It is not likely to change its opinion
15 or its decision.

16 All the objections are overruled.

17 MR. HELM: (Reading)

18 "I, SHIDEHARA, Kijuro, make oath and say
19 as follows:

20 "I am now Minister without Portfolio in
21 the present YOSHIDA Cabinet. Prior to this I was
22 Prime Minister of Japan.

23 "I was Foreign Minister in the HAMAGOUCHI
24 Cabinet. Premier HAMAGOUCHI approved and recommend-
25 ed reductions in the Army and Navy budgets. The

SHIDEHARA

DIRECT

1 aforesaid Premier HAMAGOUCHI pushed through the
2 ratification of the London Naval Treaty and in
3 doing so created strong opposition by the military
4 as said military felt that the aforesaid HAMAGOUCHI
5 had transgressed the Navy Chief of Staff's prerog-
6 ative of supreme command.

7 "I was on the platform of the Tokyo Rail-
8 way Station when the aforesaid Premier HAMAGOUCHI
9 was shot by a silly young man named SAGOYA. I was
10 not standing with the Premier but was some distance
11 away. I rushed over to the Premier to help him
12 and I saw them take this young assassin in custody.
13 Later, owing to the physical incapacity of the
14 aforesaid Premier HAMAGOUCHI, I was acting Prime
15 Minister and caused a thorough investigation to
16 be made of the shooting of Premier HAMAGOUCHI.
17 This investigation established the motive of the
18 assassin to be dissatisfaction with the Naval Dis-
19 armament Policy of Premier HAMAGOUCHI.

20 "I carried on for awhile as acting Prime
21 Minister, hoping that the aforesaid Premier HAMAGOUCHI
22 would recover from his wounds so that he could re-
23 sume active participation in the government but
24 instead he got worse and it became necessary for the
25 HAMAGOUCHI Cabinet to resign.

SHIDEHARA

DIRECT

1 "I became Foreign Minister in the succeeding
2 Cabinet of Baron WAKATSUKE, Reijiro. The foreign pol-
3 icy of the aforesaid WAKATSUKE Cabinet was definitely
4 conciliatory and cooperative so far as international
5 affairs were concerned. However, a great strain
6 was put on this foreign policy in September 1931
7 by the outbreak of the Manchurian Incident. Short-
8 ly before the Manchurian Incident, as Foreign
9 Minister, I received confidential reports and
10 information that the Kwantung Army was engaged in
11 amassing troops and bringing up ammunition and
12 material for some military purpose, and knew from
13 such reports that action of some kind was contemp-
14 lated by the military clique. The WAKATSUKE Cab-
15 inet and myself, as Foreign Minister, following
16 the Manchurian Incident made every effort to con-
17 trol the Army and prevent further territorial ex-
18 pansion but were unable to do so. I, as Foreign
19 Minister, was bitterly assailed in the press and
20 by ultra-nationalists and the militarists for
21 'SHIDEHARA'S weak-kneed foreign policy.' These
22 aforesaid groups were clamoring for 'a positive
23 policy' in Manchuria. This was a great embarrass-
24 ment to the WAKATSUKE Cabinet. As a result of the
25 inability of the WAKATSUKE Cabinet to control the

SHIDERHARA

DIRECT

1 Army and suppress their expansion in connection
2 with the aforesaid incident the Cabinet was forced
3 to resign."

4 (Signed) SHIDEHARA, Kijuro
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SHIDEHARA

CROSS

1 MR. HELM: You may cross-examine.

2 MR. McCORMACK: My name is McCormack. I
3 represent General MINAMI.

4 CROSS-EXAMINATION

5 BY MR. McCORMACK:

6 Q Mr. Witness, you were Foreign Minister in
7 the HAMAGUCHI Cabinet, were you?

8 A Yes.

9 Q When was it formed?

10 A You are inquiring about the organization
11 of the WAKATSUKE Cabinet.

12 Q When did the cabinet come into being?

13 A I recall that the WAKATSUKE Cabinet was
14 formed in 1930.

15 Q When was the HAMAGUCHI Cabinet formed?

16 A I think it was probably in 1929.

17 Q When did it resign?

18 A The resignation of the HAMAGUCHI Cabinet
19 took place in 1930.

20 Q Did you appoint the members of that Cab-
21 inet?

22 A I have never appointed members of the
23 Cabinet.

24 Q The Prime Minister did, did he not?

25 A Yes, as you say, the Premier selected the

SHIDEHARA

CROSS

1 members of his cabinet, which he recommended to the
2 Throne. Whatever the case, I had nothing to do with
3 the organization of the cabinet.

4 Q Who was the Finance Minister of the HAMA-
5 GUCHI Cabinet at that time?

6 A I cannot recall just at this moment, but
7 he was the man who was later assassinated.

8 Q Could it have been Baron WAKATSUKE that was
9 Finance Minister to that cabinet?

10 A He was not Minister of Finance.

11 Q Who was the War Minister in the HAMAGUCHI
12 Cabinet?

13 A General MINAMI.

14 Q Was not General ARAKI the War Minister in
15 the HAMAGUCHI Cabinet?

16 A General ARAKI was not Minister of War in
17 the HAMAGUCHI Cabinet.

18 Q What position did General MINAMI have
19 during the HAMAGUCHI Cabinet?

20 A General MINAMI was Minister of War.

21 Q Now, did the HAMAGUCHI Cabinet approve
22 and recommend reductions in the army and navy budget?

23 A The HAMAGUCHI Cabinet generally reduced
24 military expenditures, and one of its policies was
25 to reduce the financial disbursements of the State.

SHIDEHARA

CROSS

1 Q Do you remember how many divisions of the
2 army were reduced during the tenancy of that cabinet?
3

4 A I do not think that was at the time of the
5 HAMAGUCHI Cabinet, but before that cabinet, and at
6 that time I think it was two divisions which were
7 reduced.

8 Q Did the HAMAGUCHI Cabinet have anything to
9 do with the reduction of those two divisions?

10 A With respect to the reduction of two
11 divisions, the HAMAGUCHI Cabinet has had no connection.
12

13 Q Did the War Minister in the HAMAGUCHI Cabinet
14 take a leading role in such armament reduction?
15

16 A The War Minister made every effort to cooperate
17 with the cabinet in making these reductions.

18 Q And you say that the War Minister was
19 General MINAMI, is that right?

20 A It is as you say.

21 Q Now, after the Prime Minister, HAMAGUCHI,
22 was shot, and his cabinet resigned, did you continue
23 as Foreign Minister in the succeeding WAKATSUKI
24 Cabinet?

25 A Yes, I did as Foreign Minister.

At this moment I now recall that the

SHIDEHARA

CROSS

1 Minister of Finance, whose name I did not recall
2 before, was Inouye JYUNNOSKE.

3 Q Was the answer to the last question "yes"
4 or "no"?

5 A The last question was not clear to me.

6 THE PRESIDENT: That is in the affidavit.
7 Why do you ask him things he said in his affidavit?
8 It is a common failing of the defense counsel.

9 MR. OKAMOTO: The witness is now speaking
10 on an entirely different matter from what he has
11 written in the affidavit.

12 THE PRESIDENT: Mr. Counsel at the rostrum,
13 take the objection. In the affidavit, I am reading
14 the answer this man is asked to give.

15 MR. OKAMOTO: There is a number of differences
16 in the statement of the witness.

17 MR. McCORMACK: Where do these differences
18 exist?

19 MR. OKAMOTO: The witness says that the War
20 Minister at the time of HAMAGUCHI's cabinet --

21 THE PRESIDENT: We cannot have two counsel
22 cross-examining at one time. Sit down, please.

23 This appears in the affidavit: "I became
24 Foreign Minister in the succeeding Cabinet of
25 Baron WAKATSUKE, Reijiro,"

SHIDEHARA

CROSS

1 We will recess now until thirty minutes
2 after one.

3 (Whereupon, at 1200, a recess
4 was taken.)
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SHIDEHARA

CROSS

3
0
l
l
b
e
r
3
&
y
e
l
d
e
n1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

AFTERNOON SESSION

The Tribunal met, pursuant to recess, at 1330.

(English to Japanese and Japanese to English interpretation was made by OKA, Takashi and TSUCHIYA, Jun, Hidekazu Hayashi acting as Monitor.)

MARSHAL OF THE COURT: The International Military Tribunal for the Far East is now resumed.

MR. McCORMACK: If the Tribunal please.

CROSS-EXAMINATION

BY MR. McCORMACK:

Q Baron SHIDEHARA, in whose Cabinet was General MINAMI?

A General MINAMI was in the WAKATSUKI Cabinet.

Q This morning when I asked you who was War Minister in the HAMAGUCHI Cabinet, you replied, General MINAMI. Were you in error in making that statement?

A I am afraid I misunderstood your question this morning. There is no doubt -- excuse me -- without doubt, General MINAMI was War Minister in the WAKATSUKI Cabinet.

Q Mr. Witness, kindly answer my questions directly in English, will you, please, from here on?

THE PRESIDENT: We prefer him to speak in

SHIDEHARA

CROSS

1 Japanese and to be interpreted.

2 Q Baron, do you remember who was War Minister
3 in the Cabinet of HAMAGUCHI?

4 A (In English) If memory serves me right, I
5 think it was General ARAKI, who was War Minister.

6 Q Tell the Tribunal if the same political
7 party controlled both the HAMAGUCHI and the WAKATSUKI
8 Cabinets.

9 A (In English) Certainly, it was the same
10 political party.

11 Q Same political party. Now, while you were
12 Foreign Minister in the WAKATSUKI Cabinet, did not
13 General MINAMI as War Minister of that Cabinet carry
14 out faithfully the reduction in armament by reducing
15 the Army by four divisions?

16 A (In English) I do not believe that it was in
17 the WAKATSUKI Cabinet.

18 THE PRESIDENT: His English is impossible.
19 Get him back into Japanese.

20 MR. McCORMACK: Will the reporter kindly
21 read that question back and have the Baron answer the
22 question then in Japanese?

23 THE PRESIDENT: The strain of listening to
24 him in English is too great for this Court. He must
25 speak in Japanese and then be interpreted by a person

SHIDEHARA

CROSS

1 who speaks English well.

2 (Whereupon, the last question was
3 read by the official court reporter.)

4 A Four divisions, did you say? I believe that
5 two divisions were decreased during the HAMAGUCHI
6 Cabinet, and I believe this reduction was not carried
7 out during the WAKATSUKI Cabinet; however, I am not
8 positive.

9 Q Baron, in your affidavit you state in the
10 fifth paragraph as follows: Shortly before the
11 Manchurian Incident you received confidential reports
12 and information that the Kwantung Army was amassing
13 troops and ammunition and material for some military
14 purpose, and you therefore knew that some action was
15 contemplated by the military clique. Now, from where
16 and from whom did you receive such reports?

17 A I believe the word "report" is not quite
18 correct. What I actually meant was "rumors"; that
19 is to say, Japanese residents in Manchuria used to
20 come and talk to me and in the course of these conver-
21 sations they told me something of this nature. I
22 did not receive anything in the nature of an official
23 report.

24 Q Did you take any action on those reports?

25 A I was not in a position to take any action.

SHIDEHARA

CROSS

1 Q Whom did you talk to, Premier WAKATSUKI
2 or War Minister MINAMI?

3 A It is true that I talked with Premier
4 WAKATSUKI and also with War Minister MINAMI, but I
5 did not take any action in that sense of the word.
6 I merely talked with them.

7 Q Do you remember what General MINAMI said
8 about such report to you?

9 A General MINAMI never confirmed these reports
10 to me. I merely talked to him about these reports
11 and asked for his cooperation in maintaining peace
12 and order.

13 Q Did General MINAMI cooperate with you?

14 A I am convinced that General MINAMI did all
15 in his power to cooperate with me.
16

17 Q Do you remember what efforts were attained
18 by General MINAMI?

19 A I neither know nor have I heard of any
20 action which General MINAMI may have taken within the
21 War Ministry.

22 Q Well, generally speaking, were General
23 MINAMI's ideas as War Minister in agreement with
24 your ideas or were they different from yours?

25 A Not only have I never heard any opposing
opinions from General MINAMI but, on the whole, I

SHIDEHARA

CROSS

1 believe that he was in agreement with my own opinions.

2 Q Now, in your affidavit, you state as follows:
3 "that action of some kind was contemplated by the
4 military clique." Do you or do you not intend to
5 include MINAMI in this terminology?

6 A By "military clique" I did not intend to
7 include General MINAMI.

8 Q Well, will you explain to the Tribunal whom
9 you intended to include in those words, "military
10 clique?"

11 A At the time I heard that it was the younger
12 officers in the Army who were contemplating this
13 action and probably General MINAMI as War Minister
14 was occupied in keeping order among these younger
15 officers; but I do not know just exactly the names
16 of these younger officers.

17 Q Now, is it not a fact that the Cabinet has
18 no direct control of the action of the Army as it is
19 not in their jurisdiction?

20 A That is my understanding, that is to say, the
21 Cabinet has no direct word, no direct voice in Army
22 affairs.

23 Q What is your present age, Baron?

24 A I was born in 1872.

25 THE MONITOR: Correction: "1972," according

SHIDEHARA

CROSS

1 to the witness.

2 THE WITNESS: Yes, 1872.

3 Q Baron, kindly state whether you remember
4 whether General MINAMI was one of the members of the
5 Cabinet who welcomed the proposition of inviting a
6 committee of the League of Nations to inspect the
7 situation in Manchuria?

8 A I was no longer -- I believe I was no longer
9 Foreign Minister at the time the League of Nations
10 was considering sending a committee to Manchuria --
11 a commission, rather.

12 Q Baron, referring to your affidavit in the
13 fifth paragraph, you make the following statement:
14 "The WAKATSUKI Cabinet and myself, as Foreign Minister,
15 following the Manchurian Incident made every effort
16 to control the Army and prevent further territorial
17 expansion." Now, what do you mean when you say the
18 WAKATSUKI Cabinet made every effort to control the
19 Army? What does the word "control" mean to you when
20 you use it thusly?

21 A As I said before, the government cannot
22 interfere directly with the Army but it may convey
23 to the Army through the War Minister what the govern-
24 ment thinks of any action the Army might take so
25 that by this means, to a certain extent, the

SHIDEHARA

CROSS

1 government is able to have a say to control Army
2 policy.

3 Q Baron, when you say "control" -- "effort
4 to control the Army" -- do you mean the armies out in
5 the field under particular generals?

6 A By "army" I did not mean any particular
7 army; but there were many military men in Manchuria
8 and I meant that through the War Minister the govern-
9 ment could control the actions of these military men
10 in Manchuria.

11 Q In the same sentence, Baron, you use the
12 word, "prevent" -- you say, "prevent further territor-
13 ial expansion." What do you mean by the use of the
14 word, "prevent" -- "further prevent"?

15 A As you know, the Manchurian Incident began
16 because of an incident on the railway near Mukden, and
17 this incident developed into the Manchurian Incident.
18 In this affidavit I meant to prevent the further ex-
19 pansion of this incident and the government made
20 every effort in this line.

21 Q Baron, was it not the unanimous decision
22 of the Cabinet that the Manchurian Incident was self-
23 defense?

24 A The War Minister reported to the Cabinet
25 that the Mukden Incident had been an act of

SHIDEHARA

CROSS

1 self-defense. Even so, the Cabinet considered that
2 it was wrong that this affair should be extended to
3 other districts and bent every effort to prevent this
4 further expansion.

5 Q Was it not also, Baron, the official
6 determined opinion of the Foreign Office of which
7 you were Chief that it was self-defense?

8 A The Foreign Office had no direct means of
9 investigating this incident so it was forced -- the
10 only means it had of obtaining information on this
11 incident was through the War Minister's report.

12 Q Is it your opinion, Baron, that General
13 MINAMI used all his best efforts to localize the
14 Manchurian Incident?
15

16 A As I said before, I am convinced that General
17 MINAMI did everything in his power to prevent the
18 further expansion of this incident.

19 (Whereupon, SHIMANOCHI, Toshiro
20 replaced TSUCHIYA, Jun as interpreter.)

21 THE PRESIDENT: Dr. KIYOSE.

22 CROSS-EXAMINATION (Continued)

23 BY DR. KIYOSE:

24 Q Concerning the Mukden Incident, the War
25 Ministry announced that it was an act of righteous
self-defense. Do you remember anything of this?

SHIDEHARA

CROSS

1 A I do recall that. As I said before, the
2 cause of the outbreak of the incident was brought to
3 the Cabinet's attention through a report made by the
4 Minister of War; and it was on that basis that the
5 Japanese report was made on this matter to the League
6 of Nations.

7 Q I understand. Then do you also remember
8 that a few days later on the 24th of September the
9 Cabinet adopted a resolution saying that Japan had
10 no territorial ambitions and announced this resolution?

11 A Yes, as you say, very honestly speaking,
12 the Cabinet by no means had any idea of territorial
13 expansion and in that sense issued the statement.
14
15
16
17
18
19
20
21
22
23
24
25

SHIDEHARA

CROSS

A
b
r
a
m
&
M
o
r
s
e

1 Q The next day, on the 25th, did you not cause
2 Ambassador DEBUCHI, stationed in America, to inform
3 America of this statement also?

4 A The statement submitted to the League of
5 Nations was based upon the report of the Minister of
6 War on the reasons how and under what circumstances the
7 incident had broken out. I don't recall definitely
8 whether the same report was made to the United States
9 government through Ambassador DEBUCHI but I do think
10 that the fact that such a report was made was quite
11 likely.

12 INTERPRETER: Correction: I do know that
13 there was a statement that was submitted to the League
14 of Nations.

15 Q I consider this point very important. In
16 your affidavit you have said that you made -- that the
17 cabinet made every effort to prevent further terri-
18 torial expansion. If we are to believe the statement
19 that you have just made the cabinet did not have any
20 territorial ambition in Manchuria. Is that correct?

21 A In so far as the government was concerned,
22 there was absolutely no desire nor any intention of
23 territorial expansion up to the very last, but as it
24 was a small incident grew up into a very large
25 incident, but this was entirely against the desire and

SHIDEHARA

CROSS

1 wishes of the government.

2 Q I believe that even if the incident did
3 develop and become larger, the intention of Japan
4 not to make Manchuria a part of Japan remained the
5 same. What do you think of this?

6 A I am speaking only of the events and hap-
7 penings which took place during my tenure of office
8 as Minister of Foreign Affairs. I cannot testify to
9 anything that occurred when I wasn't in that office.
10 I am trying to say that the government entertained
11 no intention or idea of territorial expansion while
12 I was serving in the government. However, it is a
13 fact that an incident which occurred along the rail-
14 way line spread to other areas.

15 Q Then, may I understand that it was only the
16 scope of operations that was expanded, and that while
17 you were in office the government had no intention of
18 annexing a large area to the Japanese Empire?

19 A It is as you stated.

20 Q That ends the first stage of my question.
21 Next, in answer to Mr. McCormack's question you replied
22 that the cabinet was able to control the army to a
23 certain extent. May I understand that statement as
24 implying that the cabinet was not in its construction
25 able to control the army?

SHIDEHARA

CROSS

1 A It is as you say. The government as constructed
2 had no authority, no power, directly to influence the
3 army and its actions one way or the other.

4 Q Lastly, I would like to ask you regarding the
5 resignation of the WAKATSUKI Cabinet. In the last
6 part of your affidavit you say that the WAKATSUKI
7 Cabinet was forced to resign as a result of its
8 inability to control the army but do you not rather
9 consider it was not the question of controlling the
10 army but a difference that arose within the cabinet
11 itself that forced it to resign?

12 A By the words "cabinet was forced to resign,"
13 that does not mean that somebody with authority had
14 come with orders telling the cabinet to resign. The
15 fact of the matter is that various complicated ques-
16 tions arose. Opinions were presented advocating that
17 it would be better for the country if a cabinet re-
18 organization were carried out. Opinions were also
19 expressed that at such a time it would not be advis-
20 able to rely on just one party; that a coalition
21 system would be more advisable, or another opinion
22 that it would be better to have a National Unity
23 Cabinet. Because of differences of opinion regard-
24 ing this matter, and because no agreement of views
25 was reached, the cabinet was compelled to submit its

SHIDEHARA

CROSS

1 resignation.

2 Q Thank you. I will refresh your memory some-
3 what. At the time the Finance Minister INOUE, in
4 order to overcome the depression, decreased the
5 salary of government employees and placed an embargo
6 on the export of gold, and the Home Minister opposed
7 those measures and at this time the opinion was given
8 that it would be better to form a coalition cabinet
9 with the Seiyuku, and that, therefore, the fall of the
10 WAKATSUKI Cabinet was due to internal dissention.

11 MR. HELM: If your Honor please, I did not
12 quite understand what the question was.

13 THE PRESIDENT: Well, you heard as much as
14 we did.

15 MR. HELM: Could I ask counsel to put that
16 in the form of a question, please?

17 DR. KIYOSE: I shall cut up my question.

18 Q The causes of the fall of the WAKATSUKI
19 Cabinet: One, the financial policy adopted by Finance
20 Minister INOUE. Two, in order to maintain the gold
21 standard in Japan, in spite of the fact that it was
22 too early, the embargo on gold was lifted. Three,
23 the salary of government employees was decreased and
24 other deflationary measures adopted. As a result,
25 society in Japan became very complicated. Therefore,

1 the Home Minister at the time was of the opinion that
2 the cabinet should not continue as it was then con-
3 stituted but should form a coalition cabinet with the
4 Seiyuka.

5 MONITOR: Correction: With the opposing
6 party.

7 Q But the then Premier WAKATSUKI did not agree
8 with this opinion. Was this not the cause of the fall
9 of the WAKATSUKI Cabinet? And that, therefore, the
10 fall of this cabinet was due to an internal dissen-
11 tion?

12 A It is in some sense as you say. The remote
13 cause of the fall of the WAKATSUKI Cabinet is as you
14 say due to various difficult financial questions.
15 However, because the Manchurian Incident took on a
16 graver character as the incident spread, created a
17 very difficult situation which had had to be over-
18 come, and views were then expressed that a National
19 Unity Cabinet, or something of that nature, should be
20 created to overcome the crisis. I should say, there-
21 fore, that the remote cause may be as you say, but the
22 Manchurian Incident aggravated the situation, which
23 compelled the cabinet to resign.

24 Q What I intended to ask by my question was
25 this: You have just used the word "compelled" and

SHIDEHARA

CROSS

1 in your affidavit you have used the word "forced."
2 But, do you not rather consider that the cabinet fell
3 because of an internal dissension and not because of
4 any exterior incident?

5 MR. HELM: I object to that, your Honor.
6 The witness has just answered that question.

7 THE COURT: Well, perhaps he has. Accord-
8 ing to my construction, he has. It was three internal
9 causes that caused its fall.

10 Q I shall take up another aspect. In your
11 affidavit you have stated that Premier HAMAGUCHI was
12 assassinated by a young man named SAGOYA, and you
13 also stated that as a result of a thorough examin-
14 ation you found that the motive of the assassination
15 was dissatisfaction with the naval disarmament policy
16 of Premier HAMAGUCHI. Do you know of any other motive
17 for this assassination?

18 THE PRESIDENT: Dr. KIYOSE, I think a man of
19 your ability and experience should be able to put
20 shorter questions. You could have asked this witness
21 if he knew of any other cause or motive for the
22 assassination than those stated in the affidavit and
23 left it at that.

24 DR. KIYOSE: I shall make my questions short.

25 THE PRESIDENT: Let him answer the question

SHIDEHARA

CROSS

1 already put. We do not want to duplicate it.

2 Q Was the motive of SAGOYA in assassinating
3 Premier HAMAGUCHI, dissatisfaction with the dis-
4 armament policy or was there another cause?

5 A I don't know of any other motive for the
6 assassination other than that he was very much dis-
7 gruntled over the disarmament policy of the navy.

8 Q Then there was no dissatisfaction with the
9 attitude of the political parties or with the economic
10 life of the times?

11 A The purport of your question is not clear to
12 me.

13 Q The motive of his assassination, was it not
14 dissatisfaction with the politicians who were in the
15 parties at those times and dissatisfaction at the
16 difficult national livelihood?

17 A I do not believe that such a motive was in-
18 cluded in the mind of the assassin. All that I know
19 is that he was very much dissatisfied with the naval
20 disarmament policy as being inimicable to Japanese
21 interests. That is all I know.

22 Q Did SAGOYA'S act have any relation with the
23 military clique or with people in the government?

24 MONITOR: Correction: Military clique
25 which you have just stated.

SHIDEHARA

CROSS

1 A I have never heard of such a fact.

2 Q Was he not thinking about the infringement of
3 the Imperial prerogative of the supreme command?

4 A That is the same thing. He was in opposition
5 to the Naval disarmament policy as being an infring-
6 ment of the Imperial prerogatives with reference to
7 the supreme command, and it is because of that that he
8 committed the act.

SHIDEHARA

CROSS

D
U
D
A
&
W
H
A
L
E
N

1 MR. ITO: I am ITO, Kiyoshi, counsel for the
2 defendant MATSUI, Iwane.

CROSS-EXAMINATION (Continued)

BY MR. ITO:

3
4
5 Q Were you not Foreign Minister before the
6 HAMAGUCHI-WAKATSUKI Cabinets of 1931? That is, were
7 you not Foreign Minister in 1926 also -- 1927 also?

8 A I think even before that, in the 14th year
9 of Taisho, or 1925.

10 Q Did not that Cabinet continue until 1927?

11 A Yes, as you say. It was the Cabinet of
12 KATO, Komei.

13 Q Was not your policy, as Foreign Minister in
14 this Cabinet, world peace and particularly friendly
15 relations between China and Japan?

16 A Yes, as you say.

17 Q Then, your whole-hearted policy of coopera-
18 tion with China, did this policy meet with Chinese
19 understanding and approval?

20 THE MONITOR: Correction: Maintaining
21 harmonious relationship with China.

22 A I can't say exactly. There was also opposi-
23 tion in my own country, and, therefore, I was criti-
24 cised by both sides. However, as it progressed,
25 Chinese understanding of my policy steadily increased.

SHIDEHARA

CROSS

1 I came to hold a view that China gradually began to
2 appreciate my policy.

3 Q Did the Nanking Incident of March 24, 1927,
4 occur during your tenure of office as Foreign Minister?

5 A Yes, as you have stated.

6 Q Did this incident consist of the following:
7 The Chinese Army in Nanking attacked Japanese resi-
8 dents and especially the military officers attached
9 to the consulate at Nanking, and members of the
10 consulate itself were wounded and Japanese residents
11 were looted and raped?

12 A Yes. The Japanese residents in Nanking were
13 plundered, and part of them were injured. But I do
14 not think any were killed. But this incident not
15 only affected the Japanese alone; all foreign nationals
16 in that area in China suffered casualties and damages.
17 According to my recollection, American and British
18 nationals suffered the largest casualties in wounded
19 and killed.

20 Q At the time, is it not true that although
21 the other countries concerned sent troops in order to
22 protect their residents, Japan only, in order to
23 enforce your policy of continuing friendly relations
24 with China, did not move a single soldier to that
25 area?

SHIDEHARA

CROSS

1 A When the Nanking Incident broke out, British
2 and American warships were off Nanking. And as I
3 recall, British and American warships opened fire
4 and the bombardment continued for about an hour.
5 Japanese warships then anchored nearby did not fire
6 a shot.

7 Q And also in 1931 when you were Foreign
8 Minister in the HAMAGUCHI Cabinet, was there an
9 anti-Japanese movement in China, especially in Man-
10 churia?

11 A Anti-Japanese movements broke out frequently.
12 As is well known, the Chinese had an annual observance
13 called a Day of Humiliation, at which time they carried
14 out boycott movements or other movements advocating
15 no trade with Japan. However, toward the end of my
16 service as Foreign Minister, this annual observance
17 or annual movement began to decrease steadily, until
18 toward the end it was almost about to be given up;
19 and that I had hoped for.

20 Q Is it not true that while you were Foreign
21 Minister there were many disputes between Chinese
22 and Japanese in Manchuria?

23 A As to various incidents between Japanese
24 and Chinese, I don't know, I don't recall exactly
25 whether they numbered many hundreds or scores.

SHIDEHARA

CROSS

1 But I can say there were many of them, and that many
2 of them were police matters.

3 Q These police incidents of which you speak,
4 is it not true that Marshal Chang Hsueh Liang's Govern-
5 ment oppressed and exploited Japanese industries and
6 economical enterprises in Manchuria, and that the
7 Japanese residents there protested against this?

8 A Yes. Various incidents of the kind occurred.
9 But they were largely economic problems which I
10 believed could be solved. However, there were various
11 incidents in which an army officer was killed, or
12 Koreans numbering, if I remember correctly, about
13 two hundred being maltreated by Chinese, which
14 required police action. Such incidents stimulated the
15 Japanese people.

16 (Another question was put to the
17 witness by Mr. ITO in Japanese)

18 THE PRESIDENT: I think he had better make
19 another attempt at that question after the recess.

20 We will recess now for fifteen minutes.

21 (Whereupon, at 1445, a recess was
22 taken until 1505, after which the proceedings
23 were resumed as follows:)
24
25

SHIDEHARA

CROSS

G
r
e
e
n
b
e
r
g
&
B
a
r
t
o
n

1 MARSHAL OF THE COURT: The Tribunal is now
2 resumed.

3 THE PRESIDENT: We have come to our decision
4 on the motion to amend Rule 6b. We are not convinced
5 that the position is as bad as the prosecution has
6 indicated although it may be bad. We have in mind
7 the repeated assurances that we have received from
8 the prosecution throughout the trial as to the state
9 of the case and their readiness to proceed with it
10 from stage to stage. However, we have decided, in
11 case we have made a mistake in this regard, that a
12 proviso should be made for the rule in the terms
13 which I suggested this morning.

14 If that fails to give the required relief,
15 further facts may be placed before us in a more con-
16 vincing form, and we may be able to make some further
17 amendment of the rules. But at present we think the
18 proviso should be added, and the proviso will be
19 added in the terms I stated this morning.

20 (Addressing Mr. ITO) Proceed with your
21 cross-examination.

22 In the future we require every cross-
23 examining counsel to stand at that rostrum.
24
25

SHIDEHARA

CROSS

1 BY MR. ITO (Continued)

2 Q We were in the middle of a question, and
3 you mentioned various matters rather lengthily. I
4 ask you to reply in a more brief form to the ques-
5 tion I am going to ask.

6 You have stated that various incidents took
7 place in China. The Wan Pao Shan Incident in which
8 several hundred Koreans were massacred, and the
9 Incident in which Captain NAKAMURA, Shintaro was
10 killed - are these examples of these Incidents of
11 which you speak --

12 MR. HELM: I object to this, your Honor,
13 as being outside of the realm of cross-examination.

14 THE PRESIDENT: We will take the answer.

15 A It is as you say.

16 Q In short, do you mean to say that you regret
17 that your sincerity in pursuing your foreign policy
18 towards China was not appreciated sufficiently by
19 Chinese Government officials and the Chinese people
20 at large?

21 MR. HELM: I object to that, your Honor,
22 as being irrelevant.

23 THE PRESIDENT: I will take his answer.

24 A Yes, as you say.

25 MR. ITO: That is all I have to say.

SHIDEHARA

CROSS

1 MR. CAUDLE: I am Charles B. Caudle,
2 American counsel for the defendant Toshio SHIRATORI.

3 If it please the Tribunal, in view of the
4 fact that Mr. SHIDEHARA holds a very high position
5 in the present Japanese Government, it would undoubt-
6 edly work a hardship and inconvenience on him to
7 return here to testify later. I would, therefore,
8 ask leave to ask the Court to ask him several ques-
9 tions that pertain to the defendant SHIRATORI.

10 THE PRESIDENT: I did not follow quite
11 clearly what you want. Do you suggest that two
12 counsel should cross-examine for the same accused?

13 MR. CAUDLE: I beg your pardon, sir.

14 THE PRESIDENT: What did you say? I
15 didn't quite get it.

16 MR. CAUDLE: The defendant Toshio
17 SHIRATORI. No counsel has examined for him as yet,
18 sir.

19 MR. HELM: If your Honor please, counsel
20 has asked for permission to conduct a direct
21 examination of this witness. I ask that he call
22 him at his own time to bring out any additional
23 evidence that the defense desires in their case.

24 THE PRESIDENT: Of course, we are not bound
25 by technical rules, and it is only on that ground

SHIDEHARA

CROSS

1 we could exclude this cross-examination. I think
2 he ought to be allowed to proceed.

3 MR. CAUDLE: My only idea was in the
4 interest of Mr. SHIDEHARA, for his convenience, sir.
5 There are only two or possibly three short questions.
6 I see no reason to bring him back here, sir, just
7 for that.

8 THE PRESIDENT: All I am concerned about
9 is keeping order here. We would have to have some
10 kind of rules, otherwise we don't know where we would
11 be led to. The fact remains that these arguments
12 based on strict consideration of the rules of pro-
13 cedure have no application under the Charter.

14 MR. HELM: Well, if your Honor please, if
15 the defense intrudes their whole case at this time,
16 the prosecution will never be able to go forward
17 with their burden of presenting this case, and we
18 object to being interrupted in our presentation of
19 our case at this time. The Baron is very close by
20 and can be had at any time.

21 THE PRESIDENT: You say you have only a
22 few questions?

23 MR. CAUDLE: Yes, sir.

24 THE PRESIDENT: Put them.

25 MR. CAUDLE: Possibly three.

SHIDEHARA

CROSS

CROSS-EXAMINATION (Continued)

BY MR. CAUDLE:

Q Mr. SHIDEHARA, during the tenure of your office as Foreign Minister, I believe that Mr. SHIMATORI served as Chief of the Bureau of Information directly under you, sir; is that correct?

A Yes, that is true.

Q I would like to ask you, sir, if it is not true that, during the conduct of his office in this capacity, he carried on the duties thereof in full accordance with and in line with the conciliatory policy as pertains to the international situation as laid down by the WAKATSUKI Cabinet and carried out by your department.

A I feel that he definitely and completely fulfilled the duties of his office in line with the peace policy of the WAKATSUKI Cabinet.

Q And his activities had met with the wholehearted approval of the Cabinet and you, sir?

A Yes, as you say.

MR. CAUDLE: That is all. I thank you.

MR. JUSTICE MANSFIELD: If the Tribunal please, with regard to the evidence that has just been given, it is clear that that is not evidence, strictly cross-examining the witness on the evidence

SHIDEHARA

CROSS

1 already given; it is clearly direct evidence per-
2 taining to SHIRATORI.

3 For the purpose of expediting the trial,
4 I respectfully suggest that the Tribunal consider
5 the question of whether, when a witness is placed
6 in the witness box, if each accused or the counsel
7 for each accused is entitled to examine him or
8 cross-examine him with regard to matters not con-
9 cerned with the examination in chief. If each
10 witness is examined or allowed to be examined in
11 that way, it is obvious that each witness will be in
12 the witness box, when called by the prosecution, for
13 a considerable time; and it is obvious that the
14 prosecution's case will be greatly delayed in its
15 completion.

16 For the purpose of enabling the prosecution
17 to have the policy definite, I respectfully urge
18 that the cross-examination of each witness be
19 limited to matters arising out of his direct exam-
20 ination or matters affecting his credit, and that
21 if any counsel desires to call a witness or to
22 examine a witness with regard to matters extraneous
23 to those two things, that he should then call him
24 when the defense opens its case so that we may be
25 able to cross-examine the witness on those particular

SHIDEHARA

CROSS

1 matters.

2 THE PRESIDENT: That is, of course,
3 American procedure.

4 MR. JUSTICE MANSFIELD: Well, I submit,
5 if the Court please --

6 THE PRESIDENT: I am not reflecting on it.
7 It may be far better than ours; but it is new to
8 me, and it is new to you.

9 Now, that would not save time. This man
10 would certainly be called by the defense to put
11 those three or four questions or more questions
12 that I allowed to be put this afternoon; You are
13 not going to shorten the trial by raising these
14 technical difficulties. Nothing is surer than
15 that that man, SHIDEHARA, will be called by the
16 defense in view of the nature of his cross-
17 examination; and the trial would not be expedited.
18 That applies to quite a number.

19 MR. JUSTICE MANSFIELD: Well, I submit,
20 if the Tribunal pleases, that if each defendant
21 is allowed by his counsel to cross-examine, when
22 a witness is called by the prosecution, on matters
23 extraneous either to the direct evidence or to
24 matters pertaining to credit, then the prosecution's
25 case will last considerably longer than it has been

SHIDEHARA

CROSS

1 anticipated that it will last. And also, if the
2 defense desires to make a prosecution witness its
3 own witness, then at least the prosecution should
4 have, I submit respectfully, the right to cross-
5 examine the witness upon matters which are brought
6 out entirely and which are entirely extraneous to
7 any matter previously brought out by the prose-
8 cution.

9 And, in addition, I would add that if the
10 witness is cross-examined about extraneous matters,
11 that will seriously interfere with the orderly pre-
12 sentation of this case. This case, as has already
13 been stated, has been arranged to be presented in
14 phases. And if, during phase one, cross-examination
15 is allowed for a considerable length in matters con-
16 cerning some other phase of the case, then there
17 will be considerable confusion in the record, and
18 there will be considerable delay in establishing
19 facts by cross-examination of, say, this witness
20 which will probably be established by other witnesses
21 for the prosecution at a later stage when the par-
22 ticular phase is reached.

23 I suggest that, with all those things in
24 mind, your Honor will see that the suggestion made
25

SHIDEHARA

CROSS

1 will save the time and expedite the trial if some
2 limit is put upon cross-examination, and the
3 witness can be cross-examined about that matter at
4 a later date or called as a witness about that
5 particular matter at a later date. Then the trial
6 will surely be expedited, and the case will be
7 presented to this Court in an orderly fashion and
8 in a manner which can be understood and readily
9 followed by the Tribunal. It is the object of
10 the prosecution to present it in such a way because
11 it realizes the great difficulties in understanding
12 and grasping the essential facts in this long story
13 of a conspiracy.

14 THE PRESIDENT: As this is a matter of
15 fundamental importance involving a departure from
16 principles and procedure with which I am familiar,
17 and with which I think all British representatives
18 and, perhaps the Americans, are unfamiliar, I intend
19 to refer the whole matter to the Tribunal for their
20 decision.
21
22
23
24
25

SHIDEHARA

CROSS

W
o
l
f
&
S
p
r
a
y
t

1 DR. UZAWA: Mr. President, I am Counsel
2 UZAWA. For the sake of reference I wish to say a
3 few words. As you know, in the Indictment there are
4 no concrete facts regarding the defendant, SHIGETARO.

5 MR. HELM: If your Honor please, this is
6 the second counsel we have heard representing
7 SHIGETARO.

8 THE PRESIDENT: Let us hear what he has
9 said already. He could go on forever.

10 DR. UZAWA: As a Japanese lawyer, in my
11 forty-eight years of experience as a lawyer, I have
12 never seen such an indictment. However, according to
13 Anglo-American law, which is based on the principle
14 of freedom, I believe that, for instance in this
15 case, the defendant, SHIGETARO -- it has been es-
16 tablished that the defendant, SHIGETARO, was working
17 under the witness, SHIDEHARA. If the facts are
18 established it will help to expedite the trial; and,
19 therefore, I beg leave that in these special cases
20 the Tribunal will not be bound by technical rules
21 of evidence. I believe that will help to expedite
22 the case.

23 THE PRESIDENT: We will take what you have
24 said into consideration.

25 MR. FURNESS: I will cross-examine as counsel

SHIDEHARA

CROSS

1 for Mr. Mamoru SHIGEMITSU.

2 CROSS-EXAMINATION (Continued)

3 BY MR. FURNESS:

4 Q Baron SHIDEHARA, in your affidavit you state
5 that the foreign policy of the aforesaid WAKATSUKE
6 Cabinet was definitely conciliatory and cooperative
7 so far as international affairs were concerned.
8 Could you state more definitely and briefly what the
9 policy of the WAKATSUKE Cabinet toward affairs in
10 China was?

11 A What I understand of the question, the
12 question is with reference to China, is that so?

13 Q With reference to China, yes.

14 A With respect to diplomatic problems, special
15 care was given, especially with respect to China so
16 that our diplomatic policy would be carried out in
17 accordance with -- in a conciliatory and peaceful
18 manner.

19 Q Did it come to be called the friendship
20 policy of the SHIDEHARA diplomacy?

21 A Yes, that is true.

22 Q Was there a policy which was against inter-
23 vention in Chinese affairs?

24 A There was a policy not to interfere in
25 Chinese affairs.

SHIDEHARA

CROSS

1 Q In other words, it was a peaceful policy, and
2 not a warlike policy, is that so?

3 A Yes, as you say.

4 Q At the time of the Manchurian Incident, was
5 Mr. SHIGEMITSU Minister to the Nanking government?

6 A Yes, he was.

7 Q Had he been appointed to that office on
8 your recommendation?

9 A Yes, he was.

10 Q Had he, prior to that time, had long ex-
11 perience in the diplomatic service in stations in
12 China?

13 A Yes, he had a very long diplomatic career
14 in China. I think he was appointed Minister to
15 China in my time.

16 Q Did you recommend him for that appoint-
17 ment as Minister because you thought he would carry
18 out your policy?

19 A On this point I had a very strong trust in
20 him.

21 Q From your observations prior to this
22 Incident, during it, and afterwards, while you were
23 Foreign Minister and he was Minister to China, did
24 he make every effort to carry out this policy?

25 A When I was in office I was completely

SHIDEHARA

CROSS

1 satisfied.

2 Q As a part of the Manchurian Incident, could
3 you outline briefly what the situation between Japan
4 and China was with respect to Manchuria?

5 A Prior to the Manchurian Incident the re-
6 lations between Japan and China were not smooth. The
7 question of the moment, then, was how to render the
8 relations between the countries smooth, and able and
9 capable men were sought out, and SHIGEMITSU was
10 selected.

11 Q At that time was Manchuria, to use the words
12 of the Lytton report, a territory, although legally
13 an integral part of China, which had a sufficiently
14 autonomous character to carry on direct negotiations
15 with Japan on matters which lay at the root of this
16 conflict?

17 A Was that question with reference to whether
18 direct negotiations could be held in connection with
19 the Manchurian Incident?

20 Q I will withdraw the question and ask the
21 next question. Was Marshal Chiang Tso Lin, known as
22 the young Marshal, the so-called Warlord of Manchuria,
23 and more or less the governing power of Manchuria, de-
24 spite its allegiance to China?

25 THE MINITOR: Will you read that back, please.

SHIDEHARA

CROSS

1 (Whereupon, the last question was
2 read by the official court reporter.)

3 A Yes, I think that is a fact.

4 Q Now, in your affidavit, you say that shortly
5 before the Manchurian Incident you received confiden-
6 tial reports and information that the Kwantung Army
7 was engaged in massing troops and bringing up ammuni-
8 tion and material for some military purpose, and you
9 knew from such reports that action of some kind was
10 contemplated by the military clique.

11 I ask you whether you received that in-
12 formation from Mr. SHIGEMITSU?

13 A No. As I said before, no official report
14 was received on the subject. SHIGEMITSU at that
15 time was Minister, but he sent no report to the
16 Foreign Office.

17 Q But you did receive from him diplomatic
18 dispatches telling you of the strained situation in
19 Manchuria, is that correct?

20 A I do not recall whether any report came
21 with reference to the critical situation existing in
22 Manchuria.

23 Q Did not Mr. SHIGEMITSU propose some plan
24 or conference as a result of a conference with Mr.
25 T. V. Soong on a way out of this strained situation?

SHIDHARA

CROSS

1 A That is after the Manchurian Incident
2 broke out. After the Incident broke out T. V. Soong
3 and SHIGEMITSU conferred with each other on ques-
4 tions as to how to settle the Incident. Such a re-
5 port was received.

6 Q Are you sure that there was not some such
7 plan prior to the Incident which could not be carried
8 out because the Incident happened before it could be
9 carried out?

10 A I have no recollection on the matter.

11 Q You are not certain whether there was such
12 a plan or not?

13 MR. HELM: I object to that question, your
14 Honor. He has no recollection on this. I object to
15 it.

16 THE PRESIDENT: You must take his answer.

17 Q After the Incident occurred, what was the
18 plan to which you referred?

19 A I recall that the plan was to appoint rep-
20 resentatives from both parties -- China and Japan --
21 and to have these representatives confer with re-
22 spect to seeking out an amicable solution to the
23 Incident.

24 Q Was that a plan which Mr. SHIGEMITSU had
25 worked out with Mr. T. V. Soong, then Finance

SHIDEHARA

CROSS

1 Minister of the Republic of China, Chief of the
2 Administrative Section?

3 A By plan I do not mean that a definite,
4 specific plan had come out of the talks between
5 SHIGEMITSU and T. V. Soong. It is that they had a
6 talk along some such lines.

7 Q Is it correct to say that they planned to go
8 to Manchuria and to confer with the young Marshal in
9 order to try to work out a plan to get out -- to
10 localize this Incident -- and to end the hostilities
11 which had resulted from it?

12 A I recall that it was not a concrete plan
13 such as to send representatives to Manchuria.

14 Q Do you know whether Mr. SHIGEMITSU planned
15 to go to Manchuria?

16 A I don't recall such a plan.
17
18
19
20
21
22
23
24
25

SHIDEHARA

CROSS

1 Q I show you a certain paper, which purports
2 to be official copies of decoded messages received
3 in the Foreign Office, and ask you whether it re-
4 freshes your recollection?

5 MR. JUSTICE MANSFIELD: In one breath the
6 defense asks us not to rely on technical rules of
7 evidence and now we have Major Furness relying on
8 one of the most technical rules of evidence. It is
9 rather confusing for the prosecution to know whether
10 the defense desires to follow the rules of evidence
11 of one particular country, or several particular
12 countries, or be bound by no rules of evidence. I
13 suggest that is purely a quibble. If he is putting
14 this document in the witness's hand, to ask him if
15 it refreshes his memory, that is entirely a technical
16 procedure in Anglo-American evidentiary rules. This
17 is purely a fictional loophole which they are try-
18 ing to make in the rules of the Court.

19 I submit, that if they are going to adopt
20 these tactics, then we shall be able to get rid of
21 all the objections with regard to documents, by
22 asking people who have read books consisting of a
23 thousand pages, if one particular paragraph refreshes
24 their memory as to what was contained in it, then
25 we can get it out that way. But, we do not desire

SHIDEHARA

CROSS

1 to take advantage of the defense in that way, and
2 I ask, before any document be shown to the witness,
3 and the witness be asked any questions with regard
4 to it -- if he is not asked any questions with regard
5 to it, of course, it is entirely irrelevant -- but,
6 if he is asked questions in regard to it, the pros-
7 ecution be furnished a copy at least twenty-four
8 hours beforehand.

9 THE PRESIDENT: Of course, the rules have
10 been introduced in order to remedy translation
11 difficulties, but if this document, which we have
12 not seen, consists of only a few lines and there are
13 no language translation difficulties, I see no
14 objection to using it without notice.

15 How long is the document?

16 MR. FURNESS: About nine pages, I should say.
17 There are only about three or four lines.

18 THE PRESIDENT: Well, it is too long to be
19 used without notice. You must comply with the rules.

20 MR. FURNESS: I have a copy of the English
21 translation. Of course, I did not know when Baron
22 SHIDEHARA was going on the stand, and I could not
23 identify it or not.

24 I do want to say I think there is every
25 difference in the world between introducing a document

SHIDEHARA

CROSS

1 into evidence and putting it into the hands of the
2 witness and asking him if it refreshes his recollec-
3 tion on certain plans, and I make no apologies for
4 doing that, regardless of the remarks of my learned
5 friend from Australia here.

6 I did not intend to introduce it into evidence.
7 I did not intend to have Baron SHIDEHARA read it into
8 evidence. I intended no subterfuge; I merely intended
9 to put it in his hands so he could look at it, and
10 see if he recalled the plans and conference, which
11 I believe happened.

12 MR. JUSTICE MANSFIELD: The defense says
13 this is not a "subterfuge," yet they had had Baron
14 SHIDEHARA'S affidavit for six days. They knew he
15 was to be called as a witness, and if they are going
16 to adopt tactics of this sort, then we will have to
17 make an application to the Court to have a ruling with
18 regard to documents introduced in this manner.

19 MR. FURNESS: I am not introducing a
20 document.

21 MR. JUSTICE MANSFIELD: I submit that we
22 can require the defense to put the document in as
23 evidence, if it is put into the witness's hands
24 and the witness is cross-examined, or asked any ques-
25 tion with reference to any of the contents of the

SHIDEHARA

CROSS

1 document.

2 MR. FURNESS: If, under those circumstances,
3 the prosecution wishes me to produce it, I will be
4 very happy to do so. In other words, if they wish
5 to call on me to produce it, I will be very glad to.

6 THE MONITOR: (Addressing court reporter) Will
7 you repeat that, please?

8 (Whereupon, the official court reporter
9 read the last statement)

10 THE PRESIDENT: You cannot use it, Major
11 Furness, until you have complied with the rules; in
12 view of the great length of the document.

13 It is nearly four o'clock and we will recess.

14 We adjourn until thirty minutes past nine,
15 tomorrow morning.

16 (Whereupon, at 1600, an adjournment
17 was taken until Wednesday, 26 June, 1946,
18 at 0930.)
19
20
21
22
23
24
25